



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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LEONARD P. FRUSAK
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08903-7103

EXAMINER	
LEPOVSKY, J.	
ART UNIT	PAPER NUMBER
125	2

DATE MAILED:

09/20/85

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449 | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474 | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-6 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-6 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.
8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).
10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections **MUST** be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.
12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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Claims 5 and 6 are rejected under 35 U.S.C. 112, first and second paragraphs, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and/or for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the term "acute inflammatory skin conditions" is both indefinite as to its intended meaning and broader than supportable by the limited exemplary matter present in the specification.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-6 are rejected under 35 U.S.C. 103 as being unpatentable over Schmit-Ruppin et al. who teach the use of topical creams and ointments containing zinc

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oxide (col 8; lines 30-34) which may additionally contain biologically active substances including Miconazole (col. 8, line 67 -col. 9, line 15). The determination of both optimal proportions and target use are matters of obvious alternative to one with skill in the art. Applicants' showing is noted but is not deemed to be persuasive since the proportional ratios exhibiting synergism are not commensurate with the scope of the claims. Despite applicants' contentions, the data present in the specification does not support the claim of synergism within the lower range of the presently claimed compositional ratios. Further, synergistic activity of the claimed compositions against both of the tested organisms was shown only for a proportional range narrower than that claimed, with proportions below the narrow range not being universally effective and proportions above the narrow range not being tested on more than one organism.

It is the examiner's opinion that Table II of the specification shows synergism for only ratios of 1:84 to 1:333 (miconazole nitrate to zinc oxide).

Rajadhyaksha and Gorman are cited to show the state of the art.

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Any inquiry concerning this communication should be directed to Joseph Lipovsky at telephone number 703-557-3920.

J. Lipovsky
Lipovsky:wcg

9/14/85

Leonard Schenkman

LEONARD SCHENKMAN
EXAMINER
ART UNIT 125